



中国食品土畜进出口商会

CHINA CHAMBER OF COMMERCE FOR IMP. & EXP. OF FOODSTUFFS, NATIVE PRODUCE & ANIMAL BY-PRODUCTS

北京市东城区西堂子胡同 21 号 100006
电话 010-65134370
传真 010-65132306
Website: <http://www.agriffchina.com/>

Add: 21 Xitangzi Lane, Dongcheng District,
Beijing, 100006, China
Tel: 0086-10-65134370
Fax: 0086-10-65132306

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United States Department of Commerce

International Trade Administration

Washington, D.C. 20230

United States

Dear Mr. James J. Jochum:

Thank you for your response on May 12, 2004.

As you mentioned in your letter, U.S. Department of Commerce is requesting comments on Separate Rates Practice in Anti-Dumping proceedings involving non-market economy countries. The United States Department of Commerce (DOC) has undertaken the review of its long-standing policy in Anti-Dumping proceeding of presuming that all firms within a non-market economy country are subject to government control and, thus, should be assigned a single, country wide rate, unless a respondent can demonstrate an absence of both *de jure* and *de facto control* over its export activities.

I 'd like to further emphasize my stand as follows,

We are concerned about this issue because of its potential determined influence on the Chinese exporters. As the organization of the industry, China Chamber of Commerce

for I/E of Food stuffs, Native Produce and Animal By-Products strongly opposes this policy. .

As I mentioned in the last letter, DOC will change its persistent policy. The contents of the policy are: “require submission of full questionnaire responded by all Chinese exporters in order to get qualification for a separate rate that will be based upon the weighted average dumping rate found for mandatory respondents.” In the past, except those mandatory respondents, the non-selected respondent provides a response to Section A of the questionnaire and proves that it operates its business without Chinese Government intervention, the Section A respondents could get the weighted average margins based upon the weighted average dumping rate calculated for mandatory respondents. The punitive China-wide rate that has traditionally been assigned to non-cooperative respondents or respondents that choose not to provide a Section a response.

Although it has not been confirmed, the above mention information has already made us feel very concern.

1. We think that this policy will unlawfully deprive companies not complete responses of the rights of obtaining average tariff rate .The reason is that except those mandatory respondents, DOC is almost impossible to receive all the ACD questionnaires of other enterprises. According to the antidumping regulations, a company can voluntarily request to submit a full questionnaire response. However, the long established policy of the DOC towards such voluntary respondents is to use their information only if a mandatory respondent drops out of the investigation or refuses to cooperate. Theoretically, the voluntary respondent then takes the place of or substitutes for the mandatory respondent that refused to cooperate in the investigation. As a matter of fact, however, by the time a mandatory respondent is found not to be cooperative, it is too late for the DOC to accept the information of the voluntary respondent because, from a procedural standpoint, the investigation is too far advanced to allow substitution without impeding the progress of the investigation. No rational company could offer much time or money necessary to prepare a complete response on the extremely remote chance that the DOC would use the information to calculate an individual rate for that company. A review of prior cases establishes that the DOC

never accepts voluntary respondents' information and has a long established policy of requiring only Section A responses from exporters that were not picked as mandatory respondents. Attached to this memorandum is a list of cases that demonstrate the DOC's refusal to accept full questionnaire responses from voluntary respondents or to calculate an individual rate for such companies.

DOC generally attempts to select the largest exporters that account for at least 60% of total exports to the USA of the subject merchandise during the period of investigation. When reaching the 60% level, requires a selection of a large number of exporters, as would be typical in most antidumping investigation involving China, the DOC uses its sampling authority to accept a smaller number of respondents. The DOC will generally decide that it has ability to investigate a certain number of companies and then select those companies, again using export volume data as the basis for the selection.

It should be noted that in market economy antidumping investigations, exporters that are not selected as mandatory respondents automatically are assigned an "all others" rate that is based upon the weighted average dumping rate of the mandatory respondents. These non-selected companies don't even have to submit a partial response to the dumping questionnaire.

Naturally, this policy should apply to China. However, since China is treated as a non market economy, the DOC has developed a presumption that all companies that do not respond to Section A of the questionnaire, seeking information on independence from Chinese Government control, are in fact controlled by the Chinese Government and, therefore, not entitled to a separate rate. This presumption can only be overcome if the non-selected respondent provides a response to Section A of the questionnaire and proves that it operates its business without Chinese Government intervention. In the past, all the Chinese cases have showed that those Section A respondents who are qualifies to demonstrate they are not control by Chinese government, that are not chosen as mandatory respondents to be assigned a separate rate that is based upon the weighted average dumping rate calculated for mandatory respondents. Now the policy has been suddenly changed, thus will make the unfair policy to become even more discriminate to Chinese respondents, obviously making harder to the Chinese

enterprises. The DOC has put forward similar request in the current investigation on plastic retail carrier bags from China. However, it later withdrew the instructions, just saying that it had made it wrongly.

2. The DOC's reason for using sampling to select mandatory respondents and determine the weighted average margin for the voluntary respondents is that it lacks the manpower to accept questionnaire responses from all exporters. For example, in the antidumping investigation on automotive replacement glass windshields from China, the DOC selected only two mandatory respondents, but refused to consider the voluntary response of a third exporter whose export volume was almost as high as the second mandatory respondent—the DOC claimed that it did not have the time or resources to analyze the third company's complete response without impeding the progress of the investigation. Thus except the top two exporters were selected to be mandatory respondents, all other respondents only submitted the answer to questionnaire A. At present, in the shrimp case, there are more than 60 Chinese respondents, and DOC might ask for all these companies to provide the entire questionnaire A, C and D. We are wondering whether DOC could find enough resources to investigate all of more than 60 questionnaires, or it plans to ignore all these questionnaires. If DOC has not planned to review all the questionnaires, what is the intention of doing this? Many small and medium sized Chinese enterprises make their living on shrimp processing. They not only lack of sufficient funds, but also can't offer so much time to provide the answer to those useless questionnaires that will never be reviewed. The new policy will certainly bring heavy burden to their livings, which is both unnecessary and unreasonable to them. In fact, the basic rights of the Chinese respondent enterprises have been overlooked.

3. The Chinese enterprises have put forward: If this policy has finally imposed, while we continuously oppose the policy, we have also requested all our respondent enterprises to provide the answer to questionnaires A.C.D., and we will strive to get their own separate margin as the mandatory respondents, which could demonstrate that the new policy imposed by DOC is reasonable and is not biased against and cheating Chinese respondents.

We believe that participating the AD investigation actively and earnestly in

accordance with the U.S. antidumping laws would uphold the legitimate rights and interests of the Chinese enterprises by use of the U.S. laws with our views that DOC as an adjudicator will make fair judgment on the dispute in the relevant cases against China. Consequently, we hope the Department of Commerce would consider this problem seriously and carefully based on the facts and practice.

Sincerely,

CAO Xumin

President, China Chamber of Commerce for I/E of Foodstuff,

Native Produce & Animal By-Products (CFNA)